

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

CLAIMANT: Gary M. Pellegrini

OBJECTOR: United States of America (USDA Forest Service)

CASE 76D-0223-R-2022
76D 140148-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER’S REPORT

Statement of the case

The United States of America (USDA Forest Service) (“USDA Forest Service”) filed an objection to the place of use and point of diversion of the above captioned claim.

On July 20, 2023, the parties filed a Stipulation to Resolve Objection.

Issue

Should the court accept the stipulated terms?

Findings of fact

The historical point of diversion for domestic claim 76D 140148-00 is the SESWNW of Section 18, Township 30 North, Range 28 West, Lincoln County. The historical place of use for domestic claim 76D 140148-00 is the SWSENW of Section 18, Township 30 North, Range 28 West, Lincoln County.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. Prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. Settlement, including the documents filed by a claimant where the claimant is the only party, is subject to review and approval by the Water Court. Rule 17(a),

W.R.Adj.R.

4. If the settlement agreement expands or enlarges an element of a claim, evidence meeting the burden of proof must be provided. If the evidence does not meet the burden of proof, the element shall not be expanded or enlarged. Rule 17(b), W.R.Adj.R.

Analysis

Acceptance of stipulated terms

The parties stipulated to modified legal land descriptions for the point of diversion and the place of use for domestic claim 76D 140148-00. The modified legal land descriptions accurately reflect the point of diversion and place of use identified by the hand drawn markings on the map attached to the statement of claim.

Conclusions of law

The evidence entered into the record overcomes prima facie statement of claim 76D 140148-00, justifies the modifications to the claim, and resolves the USDA Forest Service's objection to the claim. The stipulated terms should be accepted by the court.

Recommendations

Domestic claim 76D 140148-00 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SESWNW	SWSWNW	18	30N	28W	LINCOLN

PLACE OF USE:

<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	SWSENW	SWSWNW	18	30N	28W	LINCOLN

Add Remark:

THE POINT OF DIVERSION AND PLACE OF USE ARE LOCATED WITHIN HES 825.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm implementation of the recommendations in the state's centralized water right record

system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

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Service via Electronic Mail

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 140148-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GARY M PELLEGRINI
PO BOX 1534
LIBBY, MT 59923 1534

Priority Date: DECEMBER 31, 1905

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 15.00 GPM

Volume: 2.00 AC-FT

Households: 2

Source Name: SPRING, UNNAMED TRIBUTARY OF DUNN CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNW	18	30N	28W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSNW	18	30N	28W	LINCOLN

Remarks:

THE POINT OF DIVERSION AND PLACE OF USE ARE LOCATED WITHIN HES 825.